

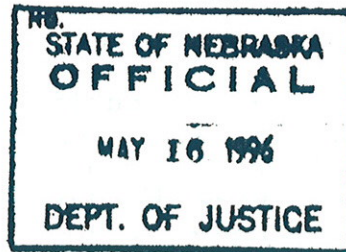


STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

DON STENBERG
ATTORNEY GENERAL

#96041



STEVE GRASZ
LAURIE SMITH CAMP
DEPUTY ATTORNEYS GENERAL

DATE: May 15, 1996

SUBJECT: United States Postal Service; Effect of
Classification Reform on Nebraska Statutes

REQUESTED BY: Lawrence S. Primeau, Director
Department of Administrative Services

WRITTEN BY: Don Stenberg, Attorney General
Fredrick F. Neid, Assistant Attorney General

This is in response to your request that Nebraska statutes be reviewed by this Office to determine whether classification reform applicable to second-class mail matter would impact relevant state law. This query apparently arises because of classification reform in the Domestic Mail Classification undertaken by the United States Postal Services to become effective July 1, 1996. The Postal Services' classification reform included redesignation of "second-class" mail materials as "periodicals" and it is this classification that is the subject of your inquiry.

It is our view that redesignation of "second-class" mail materials to "periodicals" class has no impact on relevant state statutes.

By way of background, we point out that the U.S. Postal Service is given numerous powers pertaining to its postal operations including prescribing the amount of postage and the manner in which it is paid. 39 U.S.C. § 404. The Board of Governors of the Postal Rate Commission is responsible for determining the effective date of any new rates, fees, or mail classification schedules. 39 U.S.C. § 3625(f). Prior to classification reform, second-class mail matter included newspapers

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and other periodical publications which meet certain mailability standards. The rates prescribed for this class of mail are lower than the rates prescribed for other class of mail matter. U.S. Domestic Mail Manual, Contents, etc., see 39 C.F.R. 111.1.

We have found no Nebraska statutes that require second-class postal privileges for certain classes of mail matter nor similar statutory requirements that notices be published in "second-class" publications. For this reason, classification reform you have expressed concern for shall have no impact pertaining to extant state law. The scope of our review did not include agency rules and regulations nor other administrative provision to ascertain whether these authorities include any reference to second-class postal rates or privileges. Review of administrative materials for this purpose is unnecessary in light of recent communications of the Postal Service.

The Postal Service, through counsel, has recently addressed the issue whether the classification redesignation constitutes substantive change. The Senior Vice President, General counsel, described the effect of classification reform in the following manner:

. . . The change in designation from "second-class" to "periodicals" was not intended as a substantive change affecting those state law requirements. This is reflected in the Postal Service's Federal Register notice of March 12, 1996, publishing revisions to the Domestic Mail Manual to become effective July 1, 1996, 61 FR 10114. As stated in the Federal Register notice, "E200 is renamed to recognize the renaming of second-class mail as Periodicals." *Id.* . . .

Effective July 1, 1996, second-class mail was renamed Periodicals. This name change does not alter the status of authorized publications; second-class mailing privileges are now referred to as Periodicals mailing privileges and have comparable eligibility standards.

Letter from Mary S. Elcano, Senior Vice President, General Counsel, U.S. Postal Service, to Robert J. Brinkman, Vice President, Newspaper Association of America (April 22, 1996) (on file with the Office of the Attorney General).

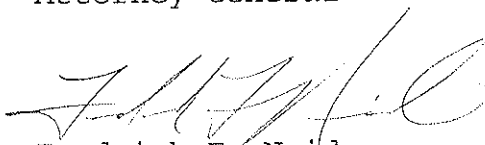
The statements of the Senior Vice President, General Counsel, clearly reflect that redesignation of second-class mail materials to periodicals class is not a substantive change and that the

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redesignation will have no effect on postal privileges established under state statutes. For these reasons, it is our opinion that the classification reform you have inquired about has no impact on postal privileges, if any, established under or pursuant to Nebraska Statutes.

Sincerely yours,

DON STENBERG
Attorney General



Fredrick F. Neid
Assistant Attorney General

Approved By:



Attorney General

